STATE OF MICHIGAN

COURT OF APPEALS

In re STERLING JACKSON III.

NICK WHITE,

Petitioner-Appellee,

v

STERLING JACKSON III,

Respondent-Appellant.

UNPUBLISHED
May 20, 2021

No. 354043
Genesee Probate Court
LC No. 2020-215165-MI

Before: SHAPIRO, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

Respondent appeals by right the probate court's order requiring him to receive combined hospitalization and assisted outpatient treatment for no longer than 180 days because of mental illness. For the reasons stated in this opinion, we affirm.

I. BACKGROUND

On May 24, 2020, Officer Nick White filed a petition seeking involuntary health treatment for respondent. The petition stated that respondent called the Flint Police Department claiming to be the chief of police and that his mother was in the FBI. The petition was supported by clinical certificates signed by two mental-health professionals, both recommending involuntary hospitalization for respondent. A Notice of Hearing and Advice of Rights, SCAO Form PCM 212, was issued to respondent on May 26, 2020.

On May 28, 2020, respondent requested to defer the hearing on commitment and agreed to combined hospitalization and outpatient treatment not to exceed 180 days and that he would take all medications as prescribed. However, at some point during his hospitalization respondent refused to take his prescribed medication, and on June 8, 2020, a registered nurse at the hospital filed a demand for hearing. Respondent was again provided the notice form advising him, in part, of the hearing scheduled for June 10, 2020, and that he had a right to an independent clinical evaluation and the right to demand a jury trial. However, the form does not specify when he had to exercise those rights.

A hearing on the petition was held on June 10, 2020. A psychiatrist who had twice interviewed respondent testified to his condition. The psychiatrist opined that respondent had chronic paranoid schizophrenia, explaining that respondent believed that he was the chief of police, that his mother was an FBI agent, and that he was a woman. The psychiatrist also testified that respondent refused to take his medication. Given respondent's "lack of reality testing," the psychiatrist believed that respondent was a danger to himself and others.

Respondent testified that he never told anyone that his mother was in the FBI. He admitted that he claimed to be the chief of police, but he only said that because he caught his mother going through his wallet and he wanted to get her attention. Respondent did not think that he was the chief of police, but he claimed that he was misidentified as "Mr. Jackson" and that he was physically a woman. Respondent indicated that the medication he was prescribed "messes [with] my menstrual system, threw it off . . . ." Respondent testified that he is able to live on his own and that he had his own apartment.

At the end of his testimony, respondent stated, "I would also like the record—to exercise my right to a—a jury trial and to be independently at the public expense examined by a medical physician." The probate court stated that "in order to do that you would have had to assert that before we started the hearing," and the court then confirmed with respondent's counsel that respondent did not make those requests before the hearing. The court found by clear and convincing evidence that respondent had a mental illness requiring treatment and ordered respondent to undergo a treatment program not to exceed 180 days, including an initial 60-day period of hospitalization. This appeal followed.

II. ANALYSIS

Respondent does not argue that the evidence presented at his hearing failed to meet the clear-and-convincing standard. Nor does he contest that his requests for an independent clinical evaluation and jury trial were untimely. He contends, however, that he did not knowingly waive those rights because the notice form does not indicate when they have to be asserted.[1]

"Under the Mental Health Code, [MCL 330.1001 *et seq*.,] a person subject to a petition for involuntary civil commitment has the right to a hearing before a judge or jury and may not be committed unless it is established by clear and convincing evidence that the individual is a person

[1] We review a probate court's disposition rulings for an abuse of discretion and its finding of facts for clear error. *In re Portus*, 325 Mich App 374, 381; 926 NW2d 33 (2018). Questions of law are reviewed de novo. *In re Estate of Bem*, 247 Mich App 427, 433; 637 NW2d 506 (2001). Although respondent requested a jury trial and an independent clinical evaluation at the hearing before the probate court, he did not make the legal arguments that he presents on appeal. Accordingly, this issue is unpreserved. "This Court has discretion to review unpreserved issues in civil cases if review would prevent manifest injustice, or is necessary for proper resolution of the case, or the issue involves a question of law and the facts necessary for determination have been presented." *In re Conservatorship of Murray*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 349068); slip op at 4. We will review respondent's arguments because they involve questions of law for which the necessary facts have been presented. See *id*. at ___; slip at 4.

requiring treatment." *In re KB*, 221 Mich App 414, 417; 562 NW2d 208 (1997). "Within four days of the filing of a petition, the probate court must give the person who is the subject of the petition a copy of the petition and notice of the rights to a full court hearing, to be present at the hearing, to legal representation, to a jury trial, and to an independent medical evaluation." *Id*. at 417-418, citing MCL 330.1453.

For the right to a jury trial, MCL 330.1458 states that "[t]he subject of a petition may demand that the question of whether he requires treatment or is legally incompetent be heard by a jury." The deadline for invoking that right is provided by MCR 5.740(B): "An individual may demand a jury trial *any time before testimony is received at the hearing* for which the jury is sought." MCR 5.740(B) (emphasis added). The same time limit applies to the right to request an independent clinical evaluation. The relevant statute, MCL 330.1463(1), provides:

> *If requested before the first scheduled hearing or at the first scheduled hearing before the first witness has been sworn on a petition*, the subject of a petition in a hearing under this chapter has the right at his or her own expense, or if indigent, at public expense, to secure an independent clinical evaluation by a physician, psychiatrist, or licensed psychologist of his or her choice relevant to whether he or she requires treatment, whether he or she should be hospitalized or receive treatment other than hospitalization, and whether he or she is of legal capacity. [Emphasis added.]

Given MCR 5.740 and MCL 330.1463(1), the probate court correctly denied respondent's requests for a jury trial and an independent clinical evaluation as untimely. However, because the notice form does not include the time limits provided by the court rule and statute, respondent argues that he did not knowingly and intelligently waive those rights.

The Mental Health Code provides for rights that must be provided absent a formal waiver.[2] These include the right to legal counsel, MCL 330.1454(3);[3] the right to be present at all hearings MCL 330.1455(1),[4] and the right to have a psychologist who has personally examined the respondent to testify at the hearing, MCL 330.1461(2).[5] By contrast, the Mental Health Code gives a respondent the right to *request* a jury trial and an independent clinical evaluation; respondent has

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[2] "Unless a statute or court rule requires that a waiver be made by the individual personally and on the record, a waiver may be in writing signed by the individual, witnessed by the individual's attorney, and filed with the court." MCR 5.737.

[3] "If, after consultation with appointed counsel, the subject of a petition desires to waive his or her right to counsel, he or she may do so by notifying the court in writing." MCL 330.1454(3).

[4] "The subject of a petition has the right to be present at all hearings. This right may be waived by a waiver of attendance signed by the subject of a petition, witnessed by his or her legal counsel, and filed with the court or it may be waived in open court at a scheduled hearing." MCL 330.1455(1).

[5] "The requirement for testimony may be waived by the subject of the petition." MCL 330.1461(2).

not referred us to any statute or court rule stating that a jury trial and independent evaluation are rights that must be provided absent a waiver. Accordingly, his non-constitutional claim regarding waiver fails.

Respondent also notes that an involuntary commitment involves a liberty interest protected by the Due Process Clause. See *In re KB*, 221 Mich App at 419; *Matter of Wagstaff*, 93 Mich App 755, 761-762; 287 NW2d 339 (1979). See also *City of St Louis v Mich Underground Storage Tank Fin Assurance Policy Bd*, 215 Mich App 69, 74; 544 NW2d 705 (1996) ("The federal and state constitutions guarantee that a person will not be deprived of life, liberty, or property without due process of law."). We agree that a liberty interest is at stake, but what process that interest requires in the context of a civil commitment is not coterminous with the due process requirements in a criminal proceeding. "There is no clearly established Supreme Court law which holds that due process requires a jury trial in civil commitment proceedings," *Poole v Goodno*, 335 F3d 705, 710-711 (CA 8, 2003), and the United States Supreme Court has indicated that civil commitment proceedings do not require the same procedural protections as criminal prosecutions, see *Addington v Texas*, 441 US 418, 431; 99 S Ct 1804; 60 L Ed 2d 323 (1979) (holding that due process does not require the reasonable-doubt standard in civil commitment proceedings).

Ultimately, respondent fails to cite any authority for the proposition that the constitutional liberty interest requires a jury trial and an independent clinical evaluation in civil commitment proceedings absent an affirmative waiver. Accordingly, he has effectively abandoned this undeveloped argument. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.").

Respondent also asserts that the notice form is deficient because it does not specify the time periods for requesting a jury trial and an independent clinical evaluation. As a practical matter, we agree that the form is inadequate and it is difficult to understand why the form does not provide this information. But the question before us is whether the failure to provide that information renders the form legally inadequate, not merely whether a better form could or should be provided. While respondent's brief refers generally to due process, it does not expressly argue that the lack of notice concerning the time periods denied him due process of law.[6] His brief does not discuss the three factors identified in *Mathews v Eldridge*, 424 US 319, 334-335; 96 S Ct 893; 47 L Ed 2d 18 (1976), for determining what process is due, or *In re KB*, 221 Mich App 414, where we applied to those factors to determine whether sufficient process was afforded before involuntary commitment. Nor does he provide any other legal basis from which we could conclude that the notice form is constitutionally defective. Accordingly, to the extent that respondent's brief

[6] Although respondent has not argued that the form is constitutionally infirm, we urge the State Court Administrative Office (SCAO) to revise it in order to include the relevant deadlines. Those respondents who might wish to request a jury trial or an independent clinical evaluation would clearly benefit and we cannot foresee any ill-effects from such a revision. However, absent a claim and conclusion that the extant form violates due process or is otherwise unlawful, we lack the authority to provide relief to respondent or order that the form be revised.

suggests a due process violation because of the adequacy of the notice provided, he has effectively abandoned that argument. See *Mitcham*, 355 Mich at 203. See also *Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001) ("Insufficiently briefed issues are deemed abandoned on appeal.").

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Jane M. Beckering